

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
UNITED STATES OF AMERICA, : Docket #1:20-cr-00234-
 : LAP-4
 :
Plaintiff, :
 :
- against - :
 :
COOKS, COUNT, : New York, New York
 : September 25, 2020
 :
Defendant. :
 : REMOTE ARRAIGNMENT
----- : AND PRESENTMENT

PROCEEDINGS BEFORE
THE HONORABLE JUDGE SARAH NETBURN,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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INDEXE X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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PROCEEDINGS

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THE CLERK: Your Honor, this is the matter of
United States v. Count Cooks, 20-cr-234.

And starting with the government, would you please
state your appearance for the record?

MR. ADAM HOBSON: Good afternoon, your Honor; Adam
Hobson for the government.

HONORABLE SARAH NETBURN (THE COURT): Good
afternoon.

MR. DARREN LAVERNE: And good afternoon again,
your Honor. This is Darren LaVerne for Mr. Cooks.

THE COURT: Thank you. Good afternoon. And good
afternoon, Mr. Cooks. My name is Judge Netburn.

MR. COUNT COOKS (THE DEFENDANT): Good afternoon.

THE COURT: I'll remind everybody that this is a
public proceeding and that members of the press and the
public are able to call in on a call-in line. All
participants are reminded that any recording or
rebroadcasting of this proceeding is strictly prohibited.

We are here for the initial presentment. And has
this matter been referred for an arraignment, as well?

MR. HOBSON: Yes, your Honor.

THE COURT: Okay. -- for the initial presentment
and arraignment and any bail argument for the defendant,
Count Cooks. Because of the COVID-19 pandemic, we're

PROCEEDINGS

4

conducting this proceeding remotely pursuant to the authority provided by Section 15002 of the CARES Act and the standing orders issued by our chief judge pursuant to that Act. I am proceeding by video conference, and I myself am outside of the district. The defendant is also appearing by video conference, and I can see him.

Sir, can you see and hear me?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. Defense counsel and counsel for the government are appearing by telephone, as is a representative from our Pretrial Services office.

Sir, you have the right to appear in court before a judge for this presentment and arraignment; however, the law allows you to consent to proceed with a remote proceeding on your approval. Have you had an opportunity to discuss this with your lawyer?

THE DEFENDANT: Yeah.

THE COURT: Mr. LaVerne, did you have any opportunity to talk to your client about that he could waive his right to appear in public and whether he consents to proceed by remote means?

MR. LAVERNE: Yes, your Honor, we did discuss the issue earlier, and Mr. Cooks is prepared to proceed by video.

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PROCEEDINGS

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THE COURT: Very well. And, sir, I have a form that your lawyer has signed on your behalf. I just want to make sure that you do agree to proceed with this proceeding remotely.

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. Thank you.

Can I have the date and time of the defendant's arrest?

MR. HOBSON: Yes, your Honor. The defendant was arrested yesterday, September 24, at approximately 11:30 a.m.

THE COURT: Thank you.

Sir, the purpose of today's proceeding is to advise you of certain rights that you have, inform you of the charges against you, consider whether counsel shall be appointed for you, and decide under what conditions if any you shall be released.

I'm now going to explain certain constitutional rights that you have. You have the right to remain silent. You are not required to make any statements. Even if you have already made statements to the authorities, you need not make any further statements; and any statements that you do make can be used against you.

You have the right to be released, either

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PROCEEDINGS

6

conditionally or unconditionally, pending trial unless I find that there are no conditions that would reasonably assure your presence in court or the safety of the community.

You have the right to be represented by an attorney during all court proceedings, including this one, and during all questioning by the authorities. If you cannot afford an attorney, I will appoint one today to represent you. And I have reviewed your Financial Affidavit, and based on the information contained in that affidavit, I'm approving the appointment of your counsel.

Sir, you've been charged in a multicount indictment. I want to go over those counts briefly. You've been charged in Count One with participating in a racketeering conspiracy. That charge is brought under Title 18 U.S.C. § 1962(d). You are further charged in Count Four with assault with a dangerous weapon in aid of racketeering, and that is a violation of Title § 1959(a)(3) and (2). In Count Five you're charged with Hobbs Act robbery, which is a violation of Title 18 U.S.C. §§ 1951 and 2. Count Six charges you with use of a firearm in furtherance of a crime of violence. That is a violation of Title 18 U.S.C. § 924(c)(1)(A)(i)(ii) and 2. And Count Ten charges you with narcotics trafficking, which is a

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PROCEEDINGS

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violation of Title 21 § 846. Count Eleven charges you with a firearm offense, which is a violation of Title 18 U.S.C. §§ 1924(c) (1) (A) (i) (ii) (iii) and 2.

Mr. Cooks, have you had an opportunity to discuss this indictment with your lawyer?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you understand the nature of the charges?

THE DEFENDANT: Yes, I understand the nature of the charges.

THE COURT: Okay, you have the right to have me read this indictment to you in open court, but you can also waive that right and you don't need me to read it to you. But if you'd like, I can read this to you.

MR. LAVERNE: Your Honor, I've just -- you know, I've been through it in more detail with Mr. Cooks, and we're prepared to enter a plea of not guilty and waive the public reading.

THE COURT: Okay. Very well. So I'll enter a plea of not guilty to these charges, sir.

THE DEFENDANT: Yes.

THE COURT: Counsel, are you prepared to make a bail application at this time?

MR. LAVERNE: Yes, your Honor.

PROCEEDINGS

8

THE COURT: All right, let me hear from the government first.

MR. HOBSON: Yes, your Honor, we're seeking detention in this case, both on dangerousness and risk of flight. Obviously, this is a presumption case, given the seriousness of the charges that the Court just reviewed with the defendant and the defendant can't rebut the presumption here.

I know that the Court is generally familiar with the Clay Avenue Mac Ballers gang because one of the other defendants, Davonte Francis, was presented a couple of days ago; but I just want to review some of the facts for the Court. The Clay Avenue Mac Ballers are a violent set of the Mac Ballers gang. They're based on Clay Avenue in the Bronx. They sell a large amount of crack, they do robberies, and they commit violence against rival gang members. Their main rivals are the Rollin' 30s Crips, which is a Crips that operates near them. They routinely fight over gang beats and drug territory because it's a very valuable drug territory.

Just as one example, in May 2018, one of the Clay Avenue Macs, who's a fellow defendant of the defendant here, murdered one of the rival Rollin' 30s Crips. He's on the indictment, and he's still a fugitive.

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2 This particular defendant, Mr. Cooks, has also
3 shot at members of the Rollin' 30s Crips, although
4 fortunately, at least for the shooting that we're aware of,
5 he does not appear to have killed anyone. Mr. Cooks also
6 sells crack for the gang. He sells approximately 50 bags of
7 crack a day, which is a very large amount. He's also known
8 to carry a gun with him while he sells crack. In addition
9 to carrying a gun while he sells crack, he also uses guns
10 to commit robberies for the gang. He's charged with one of
11 those robberies here, which was a gunpoint robbery of a
12 drug dealer.

13 The defendant has a large social media presence,
14 which he routinely uses to promote the gang, to sell drugs
15 and to talk about guns. He's a rap artist and raps about
16 gang membership frequently. One of his rap songs brags
17 about how long he has been in the gang and criminal
18 activity he's been committing since a very early age. It
19 includes the line, "Thirteen, I was selling packs; 15, I
20 was in the trap; 17, clapped my first." In other words, he
21 was selling packs of drugs at age 13, he was running the
22 trap-house apartments at age 15; and he shot his first
23 person or committed his first act of violence at age 17. As
24 the Court saw --

25 THE COURT: I'm familiar -- I'm going to interrupt

1 PROCEEDINGS 10

2 you. Sorry, can I just interrupt you for one second?

3 MR. HOBSON: Sure.

4 THE COURT: Mr. Cooks, I see you raising your
5 hand, indicating you'd like to speak. I think your lawyer
6 would prefer that you not speak and that you let your
7 lawyer speak on your behalf. If you'd like, I can make
8 arrangements for you and your lawyer to speak before we're
9 done; but it's probably better if you let your lawyer speak
10 on your behalf, okay?

11 THE DEFENDANT: All right.

12 THE COURT: Okay. If your lawyer would like to say
13 anything or give different advice, obviously I don't want
14 to speak for your lawyer.

15 MR. LAVERNE: No, I agree with that advice. And I
16 just want to, again, remind Mr. Cooks that this is simply
17 the government reciting its allegations in the case.

18 THE DEFENDANT: Okay.

19 THE COURT: All right, sorry. The government can
20 continue.

21 MR. HOBSON: That's fine, your Honor.

22 As is clear in the pretrial report, this is not
23 his first offense. He had a Youthful Offender adjudication
24 for both robbery and for burglary. He's been on probation
25 for that. While he was on probation for those offenses, he

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PROCEEDINGS

11

was continuing to be a member of the gang, to commit violence on behalf of the gang, to commit this robbery that he's charged with, and selling drugs. He has repeated arrests in addition to those robberies and burglaries -- to those convictions, none of which have deterred him from continuing his criminal activity.

I want to turn to risk of flight, which I think is a very strong concern here. We indicted this case in April, and it was unsealed when we arrested a number of his codefendants. The defendant, however, has been a fugitive since April. We went everywhere back in April looking for him. We went to his grandmother, we went to his girlfriend, we went to the friend whose apartment he was arrested in today. We told everyone that he needed to turn himself in, that he had a federal warrant out for his arrest and that he was charged in these very serious offenses. Every time we got a phone number for the defendant, we went up on that phone number, and he dropped that phone number. He kept posting to social media throughout this time, but he was almost always using public Wi-Fi networks, so we couldn't locate his precise location.

During that time I think it's interesting that one of the posts he made was a new music video. That

music video was called, "I'm a Fugitive," and it featured the line, "I'm a fugitive, but I'm still doing shit," showing that he was clearly aware that he was wanted by the federal government and that he was still on the run but committing crimes nonetheless. Last week he finally slipped up and made a Facebook post using a new cell phone that he had just activated while he was down in Greensboro, North Carolina. I should note that in the Pretrial Report it appears that he was actually arrested last week in Greensboro, North Carolina, but used a fake identification card in another name. A few days after he made that Facebook post, he made another post of a video which was taken from his grandmother's apartment up here in the Bronx. So he came from Greensboro back up to the Bronx. We were able to get a trigger fish on that phone number earlier this week, and then we finally got him yesterday after six months of looking for him, frankly, because we got lucky that he made a Facebook post using that new phone.

It's obvious why he's fleeing here. He's facing a 27-year mandatory minimum and a potential sentence of life. But even with that hanging over him, as he admits in his rap song, he's still out there doing crimes, and he's still on the run. There's nothing keeping him here. He has

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PROCEEDINGS

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no job, he's not in school. It's not clear he even has a residence. I think, according to his grandmother's statement in the Pretrial Report, he just runs the streets. Given this, we have no confidence that he will -- we have no way to assure that he will not flee again or that he will not continue committing crimes. For those reasons, we don't think the presumption can be rebutted here.

THE COURT: Thank you. I'll hear from the defense now.

MR. LAVERNE: Thank you, your Honor. We think that there are ways here to release Mr. Cooks and address the government's concerns. Just sort of in terms of bottom-line proposal, we're proposing that he be released with home detention, an ankle bracelet and three cosigners.

I just want to highlight up front, your Honor, that Mr. Cooks does have chronic asthma, which makes him particularly susceptible to COVID, notwithstanding his younger age. And I think that probably distinguishes his case from the other defendants who have come before you. And I think it's reason, you know, to find here if there is a way to release him consistent with the concerns of the bail statute, we really should make every effort to do that so that his health is not at risk.

Look, I recognize the very serious nature of the

allegations that are in the indictment. Of course, they are just allegations at this time, allegations that we deny. I would point out that in the indictment there is a murder which is mentioned by the government, and there's other allegations. With respect to Mr. Cooks, there really is only one specific allegation, which is a robbery that took place two years ago when he was 18 years old.

On the government's proffer of evidence regarding everything else, I heard stuff about social media posts, I heard stuff about rap lyrics, but I heard nothing about hard evidence that really show that Mr. Cooks was involved in violence and drug dealing as alleged in the indictment. Look, I think it's one thing -- and I'm sure we'll have this fight down the road as to whether rap lyrics are good evidence here, but people rap about all kinds of things. And I don't think that sitting here at a bail hearing right now, that's cause to keep Mr. Cooks in custody.

Mr. Cooks is 20 years old. He does have a stable residence with his grandmother. We heard from the prosecutor that his grandmother apparently said he runs the streets, but I think that the Pretrial Report also noted that he does stay consistently at his grandmother's house. That's where he lives with his grandmother and his younger sister. He is not working at present, but he has worked

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PROCEEDINGS

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over the last few years, including working at a job as a counselor mentoring younger kids in the neighborhood. That's a job that he had for some time and on a sort of volunteer basis and then was hired to do it and paid for his work at Bronx Connect. He's also been taking classes. He got his GED recently, showing that he does have ambition to move on in this world.

We have spoken, your Honor -- we didn't have a lot of time to sort of canvass his relations and his family, but we were able quite quickly to reach three people who are close to him who are willing to sign a bond, which I think says a lot. We've spoken to his girlfriend of three years; we've spoken to another close friend of his; and we've spoken to the aunt of his girlfriend. All three of these people are working and are responsible, you know, citizens of this country. And, you know, I'm happy to proffer more information about them, but I think they would serve as good cosigners on a package here.

I do want to address also, just briefly, the question -- the issue that was raised about flight concerns and him being down in North Carolina. I actually -- look, I mean, he did return -- I don't think the government disputes that he was in North Carolina, but he did return to New York on his own volition. My understanding, that he

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PROCEEDINGS

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was down in North Carolina because he has an aunt there who is ailing, and he was visiting her. And to me, the fact that he came back to New York, even under the government's theory aware that there was this indictment pending and others had been arrested, shows that in actuality he's not a flight risk. And he really has nowhere else to go. His life, his whole life has been spent in the vicinity of the Bronx, living with his grandmother. And, your Honor, I would respectfully propose that a package that is strict home detention, doesn't allow him out of the house; with three people close to him signing on a bond would address the concerns raised by the government and also keep Mr. Cooks safe while this case is pending and keep him out of harm's way in terms of COVID, given his asthma condition.

THE COURT: Thank you, counsel; I appreciate that.

Anything that the government wants to say in response?

MR. HOBSON: Your Honor, if there are particular issues you would like me to address, I'm happy to; but I don't think any of that comes close to rebutting the presumption, and I'll just rest on what I said earlier.

THE COURT: Great. Thank you very much, everybody. Thank you for your arguments. I appreciate them. They were

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PROCEEDINGS

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very strong.

I've reviewed the indictment, and I have reviewed the Pretrial Services Report and also listened to counsels' arguments to me today. Based on everything that I have before me, I do not believe that the defendant has rebutted the presumption and believe that the Bail Reform Act mandates that I detain the defendant, that he cannot be released under any conditions that will satisfy me that he won't be either a danger to the community or a flight risk. So I am ordering him detained.

Anything further on this case?

MR. HOBSON: Your Honor, if I can just state for the record that our next conference before Judge Preska is currently scheduled for November 10th. Time has been excluded under the Speedy Trial Act already until that date. And I've been in touch with defense counsel about discovery; it's ready to be produced as soon as he provides us a hard drive.

THE COURT: Excellent. All right. Anything --

MR. LAVERNE: And, your Honor --

THE COURT: -- from defense? Yes?

MR. LAVERNE: Yes, I'm sorry to cut you off, your Honor.

Yes, I did hand up a medical form --

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PROCEEDINGS

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THE COURT: I have it.

MR. LAVERNE: -- and I'd just ask that your Honor
sign it. Thank you.

THE COURT: Yes, I have it, and it has been
signed.

MR. LAVERNE: Appreciate it.

THE COURT: Okay. Do you want to speak to your
lawyer?

THE DEFENDANT: Yes.

THE COURT: Okay. I'm going to adjourn.
Ms. Plecher, if you can just make arrangements so that
Mr. Cooks and his lawyer can speak before they separate?

THE CLERK: Okay, your Honor.

THE COURT: Okay. Thank you, everybody. Stay
safe.

(Whereupon, the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of USA v. Cooks, Docket #20-cr-00234-LAP-4, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature _____

Carole Ludwig

Date: January 12, 2021